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Another most interesting aspect of these decisions concerns the question whether a hearing must be granted the prospective or actual licensee. In the cases that have been cited, the court did not consider this question, but simply affirmed the action of the officials in denying or revoking a license without a hearing. One court, however, has reached the same result on consideration.[8] Some *dicta* of the state courts[9] and of the Supreme Court[10] might justify such a practice in the case of liquor licenses on the ground that, since the state may prohibit the traffic, it may grant or revoke the privilege of engaging in it at its pleasure, — that, therefore, such a right is no longer a property right. The objection to this reasoning is that regulation is not prohibition: and, as the trade is merely regulated, persons still retain a really valuable right to engage in it. In addition, the Supreme Court decision allowing the revocation of a license to retail milk without a hearing,[11] since it cannot be sustained on the ground that the selling of milk is a privilege, suggests that some other principle is involved. The Court has held that in administering a statute vesting a commission with the power to prescribe reasonable railroad rates, the commission must grant a hearing to the road whose rate is in question.[12] In the cases under consideration, absolute discretion has been given to the commissioners, and perhaps the distinction is that if the statute prescribes a rule which the board must apply, a hearing must be granted, whereas if there is no rule in granting licenses beyond such as may be formulated by the board itself, a hearing is unnecessary because futile. It certainly seems unnecessary to require that a licensee be given a hearing when there is no fact the proof of which will entitle him to a license, since obviously he cannot prove that the commission thinks he ought to have such a license. Of course the weakness of this reasoning is that the licensee might at a hearing present such cogent reasons in favor of his application as should influence the decision of a reasonable commission. In view of this the inference is strong that this administrative process is becoming due process of law in certain cases. In a recent New York case the statute vested a commission with power to revoke licenses having a surrender value, if the licensee did not conform to the building laws. If the above distinction is valid the court decided properly in holding that a hearing must be granted in such a case, for here the statute prescribed the test, — *viz.* compliance with the building statutes. *People ex rel. Loughran* v. *Flynn*, 110 N. Y. App. Div. 279.

Ultra Vires Contracts in the Federal Courts. — When the courts began to abandon the conception that corporations were from their intrinsic limitations incapable of making *ultra vires* contracts, and to treat the matter as one of right rather than of power, they had to cast about for a new theory by which to regulate their decisions. It might have been held that *ultra vires* contracts, though existing, were simply illegal, but on account of its obvious harshness, this rule has not been generally applied.[1] On the other hand, the courts might have treated *ultra vires* acts somewhat in the

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[8] United States *ex rel.* Roop *v.* Douglass, 19 D. C. 99.
[9] See Sherlock *v.* Stuart, 96 Mich. 193; Sprayberry *v.* City of Atlanta, 87 Ga. 120.
[10] See Crowley *v.* Christensen, *supra*, at 91.
[11] People, etc., *v.* Lieberman *v.* Van De Carr, *supra*.
[12] Chicago, etc., Railway Co. *v.* Minnesota, 134 U. S. 418, 457.

[1] See Bath Gas Light Co. *v.* Claffy, 151 N. Y. 24.

fashion of the acts of *de facto* corporations, and have held them good between the parties, though cause for a visitation by the state.[2] But to prevent a dangerous indefiniteness of the scope of corporate activities, and perhaps to protect innocent stockholders, it has been deemed expedient to supplement the fear of *quo warranto* proceedings by an additional deterrent acting directly through the self-interest of the parties. In consequence there has been generally adopted a working rule lying half way between the two above suggested, and making an *ultra vires* contract neither quite void nor voidable by any particular party, nor yet quite good; but a thing which is a type unto itself, — bad unless there is some reason of justice or expediency to the contrary. Thus a wholly executory *ultra vires* contract is treated as if illegal,[3] but if one side has performed, so that such treatment would cause hardship, a remedy is given.[4] There are a few states of fact where the courts sometimes diverge from this rule and give relief on the contract when the demand of justice is not imperative,[5] and now and then, but rarely, a case errs in the other direction.[6]

The federal courts still profess to adhere to the ancient doctrine, declaring as to the *ultra vires* contract "not merely that the corporation ought not to have made it, but that it could not have made it."[7] The decisions in these courts, however, generally harmonize with the rule applied in most other jurisdictions, yet some cases there are which emphatically cannot be so explained. *First National Bank* v. *Converse*, U. S. Sup. Ct., Feb. 19, 1906.[8] In this it is held that a corporation cannot be charged with the statutory double liability on stock which it holds *ultra vires*. The contract is treated as illegal or non-existent, although there is a strong reason of justice to the contrary, for the innocent creditors of the insolvent corporation are deprived of their security, while the purchasing corporation, after receiving the dividends on its stock and all the benefits which would have accrued to any holder, is exonerated. The federal courts cannot consistently base this decision on the ground that a corporation cannot do an *ultra vires* act, for they have already handed down other decisions explicable only upon the opposite theory, as where they allow a corporation to bring ejectment against a stranger in possession of land which it was *ultra vires* for the corporation to hold,[9] a result impossible unless the corporation did in fact have title; or where they enjoin a lessor from re-entering or refuse to assist him in recovering possession before the expiration of an *ultra vires* lease,[10] — an obvious recognition of the existence of the lease. Nor can the principal case be explained upon the ground that the *ultra vires* contract, though existing, is simply illegal, for the federal courts have abandoned that position by allowing a quasi-contractual recovery for goods or services furnished under *ultra vires* contracts.[11]

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[2] See Farrington *v.* Putnam, 90 Me. 405.

[3] See Great Northern Ry. *v.* Eastern Counties Ry., 9 Hare 306.

[4] See Bath Gas Light Co. *v.* Claffy, *supra*.

[5] See Whitney Arms Co. *v.* Barlow, 63 N. Y. 62. Justice might here have been satisfied by a recovery in *quantum meruit*, but the contract price of goods delivered was allowed.

[6] Marble Co. *v.* Harvey, 92 Tenn. 115.

[7] See Central, etc., Co. *v.* Pullman, etc., Co., 139 U. S. 24.

[8] California Nat'l Bank *v.* Kennedy, 167 U. S. 362, *acc.*

[9] Cowell Co. *v.* Springs, 100 U. S. 55.

[10] American Union Telegraph Co. *v.* Union Pac. R. Co., 1 McCrary (U. S.) 188; St. Louis, etc., R. Co. *v.* Terre Haute, etc., R. Co., 145 U. S. 393; *Cf.* Nat'l Bank v. Matthews, 98 U. S. 621.

[11] Logan Co. Nat'l Bank *v.* Townshend, 139 U. S. 67.